IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.12.2004

Coram

The Honourable Mr. Justice A.K.RAJAN

Writ Petition No.15804 of 2001

M.Jayaraman .. Petitioner

Vs.

1. The Chief of the Army General,
   Army Head Quarters,
   New Delhi - 110 011.
2. The Commanding Officer,
   Madras Regimental Centre,
   Wellington at Nilgiris,
   Tamilnadu.
3. The Senior Record Officer,
   Signals Records,
   Jabbalpore,
   Madyapradesh. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus as stated therein.

For petitioner:Mr. D.Govinda Reddy

For respondents:Mr. V.Balasubramanian
SCGSC

O R D E R

The Writ Petition has been filed by the petitioner seeking for Mandamus to direct the respondents to sanction and pay the disability pension with effect from the discontinued dated 15.2.1976 immediately to the petitioner.

2. The petitioner joined the Army as Sep.No.6326261 as Ex-Sigman in the Regiment of Signals on 16.10.1965 and was rendering his continuous unblemished service as a Cook U C1.III till 8.8.1970. Subsequently, he was discharged from the service on the ground of medical invalidation. Since the disability exceeded to 20%, which was aggravated due to military service, he was given

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Rs.40/- towards temporary disability pension; it was increased periodically and he was getting Rs.70/- per month when the pension was stopped from 15.2.1976. Inspite of repeated requests by the petitioner, the said pension was not continued to pay to him. However, the petitioner received a communication stating that the disability arose not because of anything with the action of army service and therefore, he was not eligible for disability pension.

3. The learned counsel for the petitioner, after going through the records, submits the contention of the respondents that the petitioner's disability was found less than 20% and the same was not caused owing to military service cannot be a ground for the purpose, much less, for discontinuing disability pension to the petitioner. The authorities started paying the disability pension only when the petitioner was found invalid during the course of military service. In those circumstances, the disability pension discontinued by the authorities, subsequently, without assigning any other valid reason is not legally sustainable.

4. Heard the learned counsel appearing for the petitioner as well as the learned Senior Counsel appearing for the respondents.

5. In consideration of the facts pleaded and upon hearing the submissions made by the learned counsels, the fact that the disability arose during the military service and also the payment of disability pension to the petitioner remains undisputed. Hence, the discontinuation of such pension subsequently for no other valid reason is not sustainable in law.

6. Therefore, the respondents are directed to pay the disability pension from 15.2.1976 onwards, the entire arrears shall be calculated and paid to the petitioner within a period of two months from the date of receipt of copy of this order. The Writ petition is disposed of accordingly. No costs.

asvm

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Chief of the Army General,
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   Tamilnadu.

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   Jabbalpore,
   Madyapradesh.

One cc to Mr V.Balasubramanian, Advocate Sr No. 55734
One cc to Mr D.Govinda Reddy, Advocate sr No. 55509

W.P. No.15804 of 2001

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